

## Background

Electronic mail (“e-mail” and text messaging) has become an important and popular way to communicate. Millions of consumers rely on e-mail every day to communicate at work and at home. As a result, marketers are increasingly using e-mail and text messaging to sell products and services. Many consumers find unsolicited e-mail – also known as “spam” – annoying and time consuming. In addition, when unwanted messages are sent to cell phones, they can be intrusive and costly.

## CAN-SPAM Act

Congress enacted a new law, entitled the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003” (“CAN-SPAM Act”). The law, which took effect on January 1, 2004, imposes limitations and penalties on the transmission of unsolicited commercial e-mail via the Internet.

## What Is the Federal Communications Commission’s (FCC) Role In Regulating Unsolicited Commercial Electronic Messages?

In August 2004, the FCC adopted new rules to protect consumers from receiving unsolicited commercial messages on their **wireless** devices. Wireless devices include mostly cell phones, but might include some personal digital assistants (PDAs) if they meet certain criteria. The term does not include laptop computers.

The FCC rules are not yet in effect. The FCC will issue a notice saying when they become effective.

### E-mail to wireless devices

When the new rules are effective, no one will be allowed to send a commercial message to your wireless e-mail account unless you have given your explicit permission – either orally, on paper, or electronically – before the message is sent.

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- These apply to wireless accounts, such as your account with your cell phone provider.
- They do not include ordinary e-mail that you choose to access from your wireless device. For example, if you set up your own desktop computer to forward all your e-mail to your cell phone, those messages are not covered by these rules.
- The rules only cover messages that meet the definition of **commercial** used in the CAN-SPAM Act—when the main purpose of the message is to advertise or promote a commercial product or service. They do not include noncommercial messages, such as messages about candidates for public office.

Anyone who wants your permission to send you a commercial message must tell you the name of the entity that actually will be sending the messages as well as the name of the entity whose products or services will be advertised, if different from the sender. If you ever want to stop receiving future messages, you may do so at anytime—just use the e-mail address or website provided by the sender to withdraw or cancel your permission. If you agreed to receive messages through another method, such as dialing a short code on your cell phone, you must also be given the option to reject future messages from that company the same way.

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## Text messages to wireless devices

Those text messages that are sent as e-mail or through a website from a wireless provider using what looks like an e-mail address must comply with the rules discussed above for wireless e-mail. Most types of text messages, however, are sent from one cell phone to another and are not covered by the CAN-SPAM Act.

Nonetheless, the Telephone Consumer Protection Act and the National Do-Not-Call Registry already provide certain protections to wireless phone subscribers.

- No one may use an automatic dialing machine to call your wireless phone number – including to send a text message – unless you have given prior express consent for the call or the call is made for an emergency purpose (the call is necessary in a situation that affects the health and safety of consumers). There is a limited exception allowing cell phone companies to contact their own subscribers.
- If you have registered your cell phone number on the National Do-Not-Call Registry, no one may make a telephone solicitation to your telephone number, unless you have given prior express consent for the solicitation or have an established business relationship with the caller. If you tell a company not to call again – even if it has a business relationship with you – it is prohibited from calling you with solicitations.

## All Commercial E-mail

The CAN-SPAM Act contains **rules** that all commercial e-mail senders must follow – not just for sending messages to wireless devices. In general, all electronic messages must meet the following requirements:

**Identification** – Unsolicited commercial e-mail sent to non-wireless accounts must be clearly identified as solicitations or advertisements for products and services.

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- **Offering a Way to Reject Future Messages – Commercial** e-mail senders must provide easily-accessible, legitimate ways for recipients to reject future messages from that sender.
- **Return Address** – All commercial e-mail, and e-mail considered transactional and relationship messages (about existing transactions), must contain **legitimate** return e-mail addresses, as well as the sender's postal address.
- **Subject Lines** - Commercial e-mail senders must use subject lines that are accurate. Using misleading or bogus subject lines to trick readers into opening messages is prohibited.

Many states have already enacted **anti-spam legislation**. The CAN-SPAM Act is intended to supersede – or replace – those state or local laws aimed specifically at the use of electronic mail to send commercial messages, but the states are allowed to enforce parts of the Act. (The CAN-SPAM Act does not affect other state laws, which may affect commercial messages, such as those laws related to contracts and tort law. Nor does it affect those laws related to fraud and computer crime.)

## What Should You Do if You Receive an Unwanted Commercial Message on Your Cell Phone?

Once the rules become effective, if you receive an unwanted commercial message on your cell phone or wireless device, you may file a complaint with the FCC. While the FCC cannot award monetary or other damages and does not settle individual consumer complaints against spammers, it can issue citations or impose fines against those violating the CAN-SPAM Act and the FCC's related rules.

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You may file a complaint with the FCC about suspected violations of the CAN-SPAM Act or of the FCC's rules by e-mail ([fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)), the Internet ([www.fcc.gov/cgb/complaints.html](http://www.fcc.gov/cgb/complaints.html)), telephone 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY, or mail:

Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Consumer Inquiries and Complaint Division  
445 12th Street, SW  
Washington, DC 20554

Include the following in your complaint:

- your name, address, and daytime telephone number;
- the telephone number or e-mail address at which you received an unsolicited commercial message;
- as much specific information about the message as possible, including:
  - the date and time you received the message;
  - the identity of the company that sent the message to you;
  - the products or services that were promoted in the message;
- the sender's e-mail address and any other e-mail addresses, street addresses, or telephone numbers that may be referenced in the message;
- a description of any contact you may have had with the entity that sent the message, including any steps you may have taken to reject future messages.

If you are complaining about a text message, also let us know if you are on the National Do-Not-Call Registry.

### What Should You Do About Commercial E-Mail You Receive on Non-wireless Devices?

To file a complaint or to get free information on e-mail issues in general, visit [www.ftc.gov/spam](http://www.ftc.gov/spam) or call toll-free, 1-877-FTC-HELP (1-877-382-4357) voice; or 1-866-653-4261 TTY.

If you wish to complain about a non-wireless e-mail message from a telephone company, you may file a complaint with the FCC.

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